ATTORNEY FOR APPELLANT:

MONTY K. WOOLSEY
Cross Woosley & Glazier
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

RALPH E. DOWLING
Muncie, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JOHN R. SOLEK,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 18A02-0709-CV-825
	)	
KAREE L. SOLEK,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18D03-8806-DR-165

May 1, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

John Solek (Father) appeals from an order of the trial court requiring him to contribute to his son's college expenses and continue to pay his income-percentage share of his son's uninsured medical expenses. Father presents the following issues for review:

1. Did the trial court err in ordering Father to contribute to his twenty-one-year-old son's college expenses?

2. Did the trial court err in ordering Father to make ongoing contributions toward the uninsured medical expenses of his twenty-one-year-old son?

3. Did the trial court err in calculating Father's child support obligation?

We affirm in part and reverse in part.

Father and Karee (Solek) Buffin (Mother) divorced in 1989. The dissolution decree, entered April 7, 1989, provided that Mother would have custody of their only son, JayCe, born May 13, 1986. Father was granted reasonable visitation rights and was ordered to pay $40 per week in child support and uninsured healthcare expenses for JayCe. On May 9, 1994, Mother filed a request for modification of child support. By agreement of the parties, which was approved by the trial court, Father's child support obligation was increased to $100 per week beginning August 5, 1994. There were no further requests for modification until Father filed his petition to modify child support on June 13, 2006, eleven months prior to JayCe's twenty-first birthday.

Two hearings scheduled on Father's petition (August 8, 2006 and November 28, 2006) were continued by agreement of the parties. Hearings scheduled for January 16, 2007 and March 6, 2007 were continued at Mother's request. A hearing on Father's

petition to modify was eventually held on May 17, 2007, four days after JayCe's twenty-first birthday. During the hearing, Mother orally requested an order from the court addressing JayCe's college education expenses. Mother acknowledged that, although she believed she had filed a counter-petition requesting such an order, she had not in fact made a formal request for contribution prior to the hearing. In response, Father testified that he was not under any order to contribute to college expenses and expressly opposed Mother's request for a court order to do so. Father brought to the court's attention that JayCe was emancipated.

On June 29, 2007, the trial court issued an order reducing Father's child support obligation to $65 per week and ordering Father to contribute to JayCe's college expenses "with Mother paying 28% and Father paying 72% of JayCe's tuition, room and board, books, fees, and miscellaneous expenses commencing June 13, 2006, after scholarships, grants, and student loans have been applied." *Appendix* at 11. On July 30, 2007, Father filed a motion to correct error, asserting the following errors: That the trial court erred in failing to make a provision terminating his child support obligation upon JayCe's emancipation by virtue of his twenty-first birthday; that the trial court erred in ordering Father to contribute to JayCe's college expenses despite the fact that no request was made for such contribution until after JayCe's emancipation; and that the trial court imputed excessive income to Father and failed to account for after-born children in calculating Father's support obligation and income-percentage share. The trial court held a hearing on Father's motion to correct error on August 14, 2007. In an order dated August 20,

2007, the trial court ordered that Father's child support obligation terminate on May 13, 2007, JayCe's twenty-first birthday. The court, however, denied Father's motion to correct error in all other respects. Father now appeals.

1.

Father argues that the trial court erred in ordering him to contribute to JayCe's college expenses because JayCe was emancipated by virtue of having turned twenty-one years old prior to Mother's request for an educational needs order. Ind. Code Ann. § 31-16-6-6(a)(1) (West, PREMISE through 2007 1st Regular Sess.) provides that the duty to support a child ceases when the child becomes twenty-one years of age, but that "an order for educational needs *may continue* in effect until further order of the court." (Emphasis supplied). Our courts have interpreted this language (under a predecessor statute – Ind. Code Ann. § 31-1-11.5-12(d)) to mean that "[w]here educational needs are expressly included in a support order enacted prior to a child's emancipation or attaining age 21, the trial court is authorized to continue to address such educational needs." *Donegan v. Donegan*, 586 N.E.2d 844, 846 (Ind. 1992), *rev'd in part on reh'g*, 605 N.E.2d 132; *see also Martin v. Martin*, 495 N.E.2d 523 (Ind. 1986). The *Martin* Court took specific note that the disputed clause did not contain language that an order for educational needs "may first be initiated." *Martin v. Martin*, 495 N.E.2d at 525. Thus, our Supreme Court has held that although a trial court is authorized to complete consideration of petitions filed before emancipation, "a trial court may not first make an order for educational needs

when the petition seeking such relief is filed *after* the child's emancipation . . . ." *Donegan v. Donegan*, 586 N.E.2d at 846 (emphasis in original).

Here, Father was under no order to contribute to JayCe's educational expenses. Further, Mother's initial request for contribution was made orally at the hearing on Father's petition to modify his child support obligation. At that time, JayCe had already attained the age of twenty-one and was emancipated as a matter of law. The law is clear. The trial court was without authority to entertain Mother's oral request for an order that Father contribute to JayCe's educational expenses made after JayCe became fully emancipated. Mother's request for an educational expense order was untimely.

We reject Mother's various arguments that Father's petition to modify his child support obligation brought the issue of college expenses before the court prior to JayCe's emancipation. At the time he filed his petition for modification, Father was under no order to contribute to JayCe's educational expenses. Father sought only to modify his existing child support obligation and did not request an educational needs order (nor was it incumbent upon him to do so). Under these circumstances, Mother cannot piggyback on Father's petition to modify his support obligation in order to put her request before the court in a timely manner.

We also decline to find that Father waived his emancipation defense by consenting to continuances and not objecting to Mother's testimony and evidence regarding JayCe's college expenses. During the hearing, Father expressly opposed a court order that he contribute to JayCe's college expenses, explaining his philosophical reasons and pointing

out that JayCe was emancipated. Father clearly raised the defense of emancipation at the hearing on his petition to modify and through his motion to correct error. Because the trial court was without authority to entertain Mother's request for an educational needs order, we reverse the trial court's order that Father contribute to JayCe's educational expenses.

2.

For the same reason set forth above, Father argues that the trial court erred in ordering him to pay a proportionate share of JayCe's uninsured medical expenses. As noted above, the duty to support a child ceases when the child becomes twenty-one years of age or is otherwise emancipated. Here, the trial court ordered that Father's child support obligation terminated on JayCe's twenty-first birthday. To the extent that the payment of uninsured medical expenses is considered to be child support, Father's obligation to pay his proportionate share should also have terminated when JayCe turned twenty-one.

An order for payment of medical expenses and/or insurance can be included as part of an order to contribute to educational expenses. *Cubel v. Cubel*, 876 N.E.2d 1117 (Ind. 2007); *Schueneman v. Schueneman*, 591 N.E.2d 603 (Ind. Ct. App. 1992). *See also* I.C. § 31-16-6-2(a)(2) (West, PREMISE through 2007 1st Regular Sess.) (providing that educational support orders may include "special medical, hospital, or dental expenses necessary to serve the best interests of the child"). Having concluded, however, that the trial court was without authority to enter an educational needs order after JayCe became

emancipated, the trial court could not therefore order Father to pay a proportionate share of JayCe's uninsured medical expenses as a part thereof.

Because JayCe was emancipated and because no request for an educational expense order was timely made, there was no underlying child support order or educational expense order to support the trial court's order requiring Father to pay a proportionate share of JayCe's uninsured medical expenses. We therefore conclude that the trial court erred in ordering Father to pay a proportionate share of JayCe's uninsured medical expenses after his emancipation.

3.

Father argues that the trial court erred in determining his child support obligation. First, Father argues that remand is appropriate because the trial court failed to delineate how it arrived at his child support obligation. Father further notes that he disagreed with Mother's Child Support Obligation Worksheet (CSOW) insofar as she overstated his gross weekly income, failed to account for his two subsequent children, and overstated the number of weeks JayCe resides in her home.

Although the trial court did not include specific findings revealing how it determined Father's child support obligation, nor did it incorporate one of the parties' worksheets, we can discern from the record how the trial court arrived at its determination. The day after the hearing, Mother submitted an updated CSOW accounting for an increase in her weekly gross income. The recommended support obligation computed was $65.45, which is essentially equivalent to the trial court's order

that Father pay $65 per week in child support until JayCe's twenty-first birthday. It is clear that the trial court based the child support order on the figures contained in Mother's updated CSOW.[1] Because we can discern from the record how the trial court arrived at Father's support obligation, remand is unnecessary. *See Carter v. Dayhuff*, 829 N.E.2d 560 (Ind. Ct. App. 2005) (remand was unnecessary because the court's reasoning was evident from the record and thus review of the support order was not hampered). We will therefore proceed and address Father's arguments concerning the support calculation based upon the CSOW submitted by Mother the day after the hearing.

We turn now to Father's specific challenges to the trial court's calculation. Our Supreme Court has placed a "strong emphasis on trial court discretion in determining child support obligations" and has acknowledged "the principle that child support modifications will not be set aside unless they are clearly erroneous." *Lea v. Lea*, 691 N.E.2d 1214, 1217 (Ind. 1998).

Father argues that Mother overstated his weekly gross income in the CSOWs she submitted to the trial court.[2] Specifically, Father contends that the figure used by Mother ($2,138.00) includes compensation for overtime, which, Father claims, he does not consistently receive. On his CSOW submitted at the time of the hearing on his petition, Father showed a weekly gross income of $1,736.47. At the time of the motion to correct

[1] Indeed, the income-percentage shares calculated on Mother's updated CSOW were 72.35% for Father and 27.65% for Mother, which are consistent with the trial court's order that Father pay 72% of JayCe's educational and uninsured medical expenses and that Mother pay 28%.

[2] There is no dispute that Mother's weekly gross income is $738.

error hearing, Father showed a reduced weekly gross income of $1,521.56. Father also argues that the disputed figure for his income fails to take into account his two subsequent children.

Father does not explain how he computed the weekly gross income he attributed to himself and there is nothing in the record which supports the figures submitted by Father. The only evidence in the record regarding Father's income is a pay-stub showing that for the first twenty-nine weeks of 2006 (through July 22, 2006), Father had earned $68,663.37. Dividing this amount by twenty-nine yields a weekly gross income of $2,367.70. Multiplying this number by the multiplier for two subsequent children (.903) produces a weekly adjusted income for Father of $2,138.03, the amount entered as Father's weekly gross income on Mother's updated CSOW.

In calculating weekly gross income, the trial court may consider income from overtime worked. *Ratliff v. Ratliff*, 804 N.E.2d 237 (Ind. Ct. App. 2004) (*citing* Indiana Child Support Guideline 3(A)). Here, the trial court did just that. While Father testified that his overtime was not consistent, he did not explain how this was so or provide the court with a more accurate account of his income situation, other than to rely on the figures used in his CSOW. From the evidence in the record, it is clear that the trial court relied upon the only empirical evidence before it in figuring Father's weekly gross income. Given the calculation set forth above, the weekly gross income Mother attributed to Father in her CSOW is consistent with the evidence and clearly takes into

account Father's two subsequent children. We cannot say that the trial court's determination was clearly erroneous.

Father also disputed the number of weeks Mother claimed that JayCe lived with her now that he is a college student. Incorporated into her calculation of Father's support obligation, Mother claimed on the post-secondary education worksheet that JayCe lived at home for sixteen weeks out of the year. In his support calculation, Father claimed that JayCe lived with his Mother for four weeks out of the year. At the hearing on Father's petition, testimony revealed that JayCe lived with his Mother during the summer between his freshman and sophomore years at college, except for his involvement with a summer mission trip that lasted three weeks. Mother testified that during that time she still provided for JayCe. There was no other evidence to dispute the fact that JayCe lived with his Mother for sixteen weeks out of the year. Given the record before us, we cannot say that the trial court erred in incorporating into the child support calculation the fact that JayCe lived with Mother for sixteen weeks out of the year.

Having concluded that the trial court did not err in stating Father's weekly gross income, that the trial court's calculation of child support accounts for Father's two subsequent children, and that the trial court did not overstate the time JayCe lived with Mother, we affirm the trial court's order that Father pay $65 per week as child support until JayCe's emancipation on his twenty-first birthday.

Judgment affirmed in part and reversed in part.

MATHIAS, J., and ROBB, J., concur.